Office Supreme Court, U.S.
FILED
DEC 5 1983
ALEXANDER L. STEVAS
CLERK

NO. 83-243

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

BROWN & ROOT, INC., ET AL., PETITIONERS

V

BILLY THORNTON AND JAMES H. BROUSSARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT BILLY THORNTON IN OPPOSITION

ATREUS M. CLAY
5643 Turtle Creek
Houston, Texas 77017
Phone: (713) 944-1790
ATTORNEY FOR RESPONDENT
BILLY THORNTON

QUESTION PRESENTED

Whether a land-based worker, who spent part of his time performing undisputable longshoring operations over navigable waters, but was injured on land, was "engaged in maritime employment" within the meaning of Section 2(3) of the Longshoremen's & Harbor Workers' Compensation Act 33 U. S. C. 902(3).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Page

Cases - Continued:

Statutes:

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

NO. 83-243

BROWN & ROOT, INC., ET AL., PETITIONERS

V.

BILLY THORNTON AND JAMES H. BROUSSARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT BILLY THORNTON IN POSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. A1-A12) is reported at 707 F.2d 149. The opinions of the Benefits Review Board (Pet. App. A13-A22, A23, A29) are reported at 12 Ben. Rev. Bd. Serv. (MB) 883 and 13 Ben. Rev. Bd. Serv. (MB) 37. The Decisions and Orders of the Administrative Law Judges (Pet. App. A30-A44, A45-A71) are unreported.

JURISDICTION

The Judgment of the Court of Appeals was entered on June 13, 1983. The Petition for a Writ of Certiorari was filed on August 15, 1983. The Jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

STATUTES INVOLVED

Section 2(3) of the Longshoremen's and Harbor Workers' Compensation Act ("LHWCA"), 33 U.S.C. 902(3), provides in pertinent part:

> The term "employee" means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor worker including a ship repairman, shipbuilder, and shipbreaker, but such term does not include a master or member of a crew of any vessel***.

Section 3(a) of the LHWCA, 33 U.S.C. 903(a), provides in pertinent part:

> Compensation shall be payable under this (Act) in respect of disability or death of an employee but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel). No compensation shall be payable in respect of the disability or death of--
>
> (1) A master or member of the crew of any vessel***.

STATEMENT

Respondent Billy Thornton was employed as a crane rigger for Petitioner Brown & Root, Inc., at its Greens Bayou Fabrication Facility adjacent to the ship channel in Houston, Texas (Pet.App. A3, A14, A31-A32). This facility is used for the construction of stationary offshore drilling platforms and jackets (which are the steel pipe structures that are immersed in offshore waters to support the platforms (Pet. App. A14n.1.). Once completed, the platforms and jackets are loaded onto barges by Brown & Root riggers and are transported to offshore locations for permanent installation on the ocean floor (id. at A14, A31-A32). The loading of a platform onto a barge is called a "load-out" (id. at A3, A32). "Load-outs" occur seven to ten times a year and take from one day to a week to complete. (ibid.).

Respondent Thornton's usual job as a crane rigger involved attaching the hook of a crane onto whatever materials had to be moved and set into place during construction of the platforms (Pet. App. A3, A14, A32). As stated previously, Billy Thornton also participated in "load-outs" whereby the offshore drilling platforms and jackets would be loaded onto barges, located in navigable waters, for transportation to the offshore site (ibid.). On the day of the injury, Respondent Thornton was one of six men assigned to move timbers, crossties and rebar from the D-Yard of the Greens Bayou facility, directly adjacent to the ship channel, to the C-Yard, approximately one quarter mile away (id. at A4, A14, A32). Billy Thornton was in the process of dumping crossties from the back of a truck in the C-Yard when he fell from the truck and injured his leg (ibid.).

Billy Thornton filed a claim for benefits under the LHWCA. The Administrative Law Judge ("ALJ") denied Thornton's claim, finding that he did not satisfy the jurisdictional pre-requisites for coverage under Sections 2(3) and 3(a) of the Act (33 U.S.C. 902(3) and 903(a))(Pet. App. A33-A39). The ALJ held (Pet. App. A34, A36) that Thornton did not satisfy the "status" requirement of Section 2(3) of the Act because his primary occupation, that of a "fixed platform builder" - did not bear "a realistically significant relationship to traditional maritime activity *** (or) commerce."

The ALJ reasoned that "his occasional load-out activities cannot give him the status of a longshoreman or person engaged in longshoring operations"(Pet. App. A36). The ALJ also held that Thornton did not satisfy the "situs" requirement of Section 3(a) because the Greens Bayou facility was not a "maritime enterprise" (Pet. App. A34, A38).

Billy Thornton appealed the Decision and Order of the ALJ to the Benefits Review Board, pursuant to 33 U.S.C. 921(b)(3). The Board, in a divided vote, affirmed the ALJ on the "status"

issue and therefore did reach the "situs" question (Pet. App. A13-A17). Dissenting Board Member Miller believed that Thornton satisfied both jurisdictional tests (Pet. App. A17, A22). Board Member Miller stated that platforms were within the definition of cargo, and he argued that this Court, in P. C. Pfeiffer Co. v. Ford, 444 U.S. 69, 82-84 (1979), and Northeast Marine Terminal Co. v. Caputo, 432 U.S. 249, 273 (1977), had concluded that workers who spent at least part of their time moving cargo between ship and land were engaged in maritime employment (Pet. App. A18-A19).

Billy Thornton sought review of the Board's Decision in the Court of Appeals, pursuant to 33 U.S.C. 921(c). The United States Court of Appeals for the Fifth Circuit found that Billy Thornton did meet the "status" test under Section2(3) of the LHWCA, and thus reversed the Benefits Review Board and remanded the case for consideration of whether Billy Thornton was injured on a covered situs under Section 3(a) of the Act (Pet. App. A5-A11).

In reaching its decision on the status question, the Appelate Court below explained that LHWCA coverage turns on whether an employee is "engaged in maritime employment" (Pet. App. A7; 33 U.S.C. 902(3)). The Court recognized, however, that "maritime employment" is not limited to the occupations specifically listed in Section 2(3) (Pet. App. A7). See, e.g., Miller v. Central Dispatch, Inc., 673 F.2d 773 (5th Cir. 1982). The Court noted that offshore drilling is regarded as maritime commerce (Pippen v. Shell Oil Co., 661 F.2d at 384) and concluded that "a worker whose job directly facilitates that process is engaged in employment which has a substantial relationship to maritime commerce"(Pet. App. A9). The Court accordingly found that Billy Thornton met the status test of Section 2(3) of the Act. Because the Benefits Review Board did not address the further jurisdictional requirement of Section 3(a) of the Act, 33 U.S.C. 903(a), the Court remanded each case (Thornton and Broussard) for consideration of the situs question.

ARGUMENT

Respondent Billy Thornton adopts the position of the Solicitor

General Department of Justice, as argued in its Brief for the Federal Respondent in Opposition, that this case is not ripe for review by this Court. The Court has repeatedly observed that both the status and situs tests of Section 2(3) and 3(a) of the LHWCA must be satisfied before an employee will fall within the coverage of the Amended Act. Director, OWCP v. Perini North River Associates, No. 81-897 (Jan. 11, 1983), slip op. 16-17; P. C. Pfeiffer Co. v. Ford, 444 U.S. 69, 73 (1979); Northeast Marine Terminal Co., v. Caputo, 432 U.S. 249, 264-265 (1977). The Appelate Court has merely determined that Respondent Thornton met the status test of Section 2(3); the Section 3(a) situs question was remanded to the Benefits Review Board for determination. Therefore, Respondent Thornton agrees with the Brief for the Federal Respondent in Opposition that there has been no final determination that Respondent Thornton is entitled to benefits under the Act, and there is no reason for this Court to depart from its usual practice of declining to review nonfinal Orders of the Courts of Appeals. Goldstein v. Cox, 396 U.S. 471-478 (1970)("This Court above all others must limit its review of interlocutory orders"). See also Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook R. R., 389 U. S. 327 (1967); Hamilton-Brown Shoe Co., v. Wolf Brothers & Co., 240 U.S. 251, 258 (1916); American Construction Co., v. Jacksonville Ry., 148 U.S. 372, 384 (1893).

Respondent Thornton agrees with the Brief of the Federal Respondent in Opposition that if, on remand, it is ultimately determined that the situs requirement is not met, Petitioners will have no occasion to seek review in this Court. If, on the other hand, the Board determines that the Act's situs requirement is met, Petitioners may contest that finding in the Court of Appeals. Should the Court of Appeals agree with the Board and otherwise hold the Claimants entitled to benefits, Petitioners will then be able to file a Petition for a Writ of Certiorari raising the status issue they now seek to present, as well as any other issues decided adversely to them by the Court of Appeals.

Nevertheless, given the matters set forth above, Respondent Billy Thornton contends that review is unwarranted because the Court of Appeals correctly determined that he satisfied the Section 2(3) status test for coverage (33 U.S.C. 902(3)), and the Decision of the Appelate Court does not conflict with any Decision of this Court or any other Court of Appeals.

The Court of Appeals correctly stated that the basic test for determining whether a worker is an employee under Section 2(3) of the LHWCA is whether he is "engaged in maritime employment" (Pet. App. A7). Respondent Thornton agrees with the Brief of the Federal Respondent in Opposition that the test uniformly employed by the Courts of Appeals in making that determination for land-based workers is whether an employee's activities have a "realistically significant relationship to the traditional maritime activity" (Pet. App. A7-A9). See, e.g., Boudreaux v. American Workover, Inc., 680 F.2d 1034, 1052 (5th Cir. 1982)(en banc), cert. denied, No. 82-605 (Jan. 24, 1983); Fusco v. Perini North River Associates, 622 F.2d 1111, 1113 (2nd Cir. 1980), cert. denied, 449 U.S. 1131 (1981); Odom Construction Co., v. Department of Labor, 622 F.2d 110, 113 (5th Cir. 1980), cert. denied, 450 U.S. 966 (1981); Weyerhauser Co. v. Gilmore, 528 F.2d 957, 961 (9th Cir. 1975), cert. denied, 429 U.S. 868 (1976)). This test meets with this Court's conclusion that "maritime employment" is not limited to the occupation specifically enumerated in Section 2(3). P. C. Pfeiffer Co., v. Ford, 444 U.S. at 77-78 n. 7.

As stated in PFEIFFER, supra, at 335, the term "maritime employment" refers to the nature of a worker's activities. Thus, Section 2(3) uses the phrase "longshoremen or other persons engaged in longshoring operations" as one example of workers who engaged in maritime employment no matter where they do their job.

Respondent Billy Thornton contends that the Appelate Court below did in fact heed the admonishition of the Supreme Court in Northeast Marine Terminal Co.,Inc., v. Caputo, 432 U.S. 249 (1977), in that the language of the 1972 Amendments is broad and that an

expansive view should be taken of the extended coverage. As has been reiterated by this Court on many occasions, "the Act must be liberally construed in conformance with its purpose, and in a way which avoids harsh and incongruous results." Voirs v. Eikel, 346 U.S. 328, 333, 74 S. Ct. 88 (1953); Northeast Marine Terminal Co., Inc., v. Caputo, supra; Director, etc., v. Perini North River Associates, supra at 647. Thus, Respondent Thornton excepts to the statement of Petitioner that the opinion of the United States Court of Appeals for the Fifth Circuit in this case is in conflict with its prior decisions and is an unprecedented expansion of coverage to employees upon whom Congress did not intend bestow longshore benefits. As stated by this Honorable Court in PERINI, supra, the Legislative reports reviewed by the Court indicated clearly that Congress intended to "extend coverage to protect additional workers." (Perini, supra at 647).

In Director, OWCP v. Perini North River Associates, supra, this Court rejected application of the "significant" or "direct" relationship test to employees injured on navigable waters because, in establishing the separate "situs" and "status" tests in the 1972 Amendments LHWCA, Congress did not intend to withdraw coverage from employees traditionally covered by the Act, who were injured in the course of their employment on navigable waters as previously defined. The Court did not discuss whether the test properly applied to workers injured on land (id. at 21 n. 27). Since Respondent Thornton was not on navigable waters at the moment of his injury, it is contended herein that the Court of Appeal's application of the "realistically significant relationship" test in this case is undoubtly correct. As the Court of Appeals explained, "offshore drilling-the discovery, recovery, and sale of oil and natural gas from the sea bottom -- is maritime commerce." The Appelate Court went on to state that a worker whose job directly facilitates that job is engaged in employment which has a substantial relationship to maritime commerce (Pet. App. A9; citation imitted). See Herb's Welding v. Gray, 703 F.2d 176, 180 (5th Cir. 1983); Boudreaux v. American Workover, Inc., 680 F.2d

at 1052-1053, aff'g 664 F.2d 463, 464-466 (5th Cir. 1981); Pippen v. Shell Oil Co., 661 F.2d at 384.

Along these lines, Respondent Thornton agreed with the Brief of the Federal Respondent in Opposition, as the same appears on page 9 of its Brief, that Petitioners have erroneously contended that the "realistically significant relationship" test employed by the Court below differs from the test employed by Second and Ninth Circuits. Each of those Courts of Appeals has stated this test in terms nearly identical to the words used by the Fifth Circuit. (See Brief of the Federal Respondent in Opposition, p. 9, n. 10).

Although the Court of Appeals did not address the issue, Respondent Thornton is a covered employee under Section 2(3) of the LHWCA for the additional reason that he participated in longshoring operations (Pet. App. A13, A14, A24, A32, A48-A49, A59). In P. C. Pfeiffer Co., v. Ford, 444 U.S. at 82, 83, this Court stated that:

> "The crucial factor (in determining whether a worker is engaged in maritime employment) is the nature of the activity to which a worker may be assigned. Persons moving cargo directly from ship to land transportation are engaged in maritime employment. *** A worker responsible for some portion of that activity is as much an integral part of the process of loading or unloading a ship as a person who participates in the entire process."

Respondent Thornton contends that the size, shape, ultimate destination or use of the cargo is not relevant for coverage purposes. Cargo is defined as: "In Mercantile Law. The load or loading of a vessel; the goods, merchandise, or whatever is conveyed in a ship or other merchant vessel." Black's Law Dictionary, 268 (rev. 4th Ed. 1968). See also Webster's New International Dictionary, 406 (2d Ed. Unabridged 1958)(A-18). In the present case, as set forth above, Respondent Thornton would load said structures onto barges to be taken out to sea. May it be respectfully pointed out that even if cargo such as rice, for example, were dumped at sea, the loaders of that rice would be covered by the Act; thus, it is not the end result of the cargo, but its

assembly in loading that determines coverage by the Act. In addition, as stated above, the Act is remedial and is to be liberally construed.

As pointed out in THE LAW OF MARITIME PERSONAL INJURIES, 3rd Edition, Volume 1, 1978 Supplement, p. 38, (Martin J. Norris):

> "The amendments are remedial legislation and, as such, should receive a liberal interpretation. In the opinion of this writer, all who are engaged in maritime employment, excepting clerical employees whose work does not encompass physical contact with ship operation, ..., should come within the coverage of the Act. It is pointed out that the Act specifies, in addition to longshoremen, 'any harbor worker' which includes shipcleaners , tank cleaners, riggers, carpenters, shipceilers, cargo checkers, cargo weighers, cargo talleyers, port watchman, electricians, painters, mechanics, etc. These occupations when they involve ship operations, including cargo activities, on navigable waters and the stated adjoining areas, should rightfully come within the confines of the Act."

BENEDICT ON ADMIRALTY, 7th Edition, Volume 1A, Section 18, p. 2, 7, 8, says:

> "The term 'maritime employment' does not mean whole time employment on navigable waters alone; the term 'employer' has been defined to mean an employer any of whose employees are employed in maritime employment, in whole or in part, upon navigable waters of the United States, including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing or building a vessel.
>
> An injury or death occurring in connection with maritime activity is compensible notwithstanding the employee's habitual performance of other and different duties on land and the Act has been applied to a wide variety of shore workman's injuries occurring on navigable waters;..."

The Act, as far as the definition of "maritime employment" is concerned, replaces the old Admiralty Law; this Act is to extend more coverage to and better protect the people to whom it applies; the definition should not be tied down to one which prohibits growth to encompass new technology. The Supreme Court said in Sea-land Services, Inc., v. Gaudet, 414 U.S. 573 (1974):

> "It better becomes the humane and liberal character of proceedings in admiralty to give than to withhold the remedy, when not required to withhold it by established an inflexible rules..."

Along these lines, Respondent Thornton further contends that the denial of benefits herein would be contrary to this Court's decision concerning jurisdiction under the Act, as set forth in the case of Sun Ship, Inc., v. Commonwealth of Pennsylvania, 48 U.S.L.W. 4826 (1980). Sun Ship reiterates the importance of not re-establishing a jurisdictional dilemma which compels employees to choose between two mutually exclusive compensation schemes. This Court stated that the jurisdictional dilemma "is as acute when the jurisdictional boundary between schemes is fixed upon land, as it is when the line is drawn between two maritime spheres." In the case at Bar, that jurisdictional dilemma would be re-established by limiting federal coverage under the Act, dispite the fact that such employment has maritime aspects associated therewith.

The "load-out" aspect of Thornton's employment is sufficient in itself to bring him within the occupational coverage of Section 2(3) of the Act. (See, Gilliam v. Wiley N. Jackson Co., 659 F.2d 54 (5th Cir. 1982), cert. denied, No. 81-1039 (Jan. 24, 1983), whereby construction site foreman injured while supervising the unloading of pilings from a barge onto shore was engaged in maritime employment).

Petitioners argue (Pet. 9-11) that Respondents herein cannot be within the Act's intended coverage because, "during the legislative process which culminated in the creation of the 'status' and 'situs' tests," Congress rejected the inclusion of "offshore oil workers" within the coverage of the Act. Respondent Thornton agrees with and adopts the position of the Federal Respondent in Opposition, as set forth in the Brief for the Federal Respondent in Opposition, that this argument by Petitioners is apparently raised to undermine the Court of Appeal's conclusion that the offshore drilling process is maritime commerce. Respondent Thornton further adopts

the reasoning set forth in the Brief for the Federal Respondent in Opposition as to this particular point (Fed. Respondent in Opposition, p. 10-12).

Petitioner next contends that the Court of Appeal's conclusion that offshore oil drilling is maritime commerce conflicts with this Court's holdings Rodrigue v. Atena Casualty & Surety Co., 395 U.S. 352 (1969), and Chevron Oil Co., v. Huson, 404 U.S. 97 (1971). The holding of the Court in these two cases was that for admiralty law purposes, the fixed platforms located on the outer continental shelf are to be treated as islands within a landlocked state, and not as vessels. See 43 U.S.C. (Supp V) 1333(a)(1). In this regard, Respondent herein once again agrees with, and adopts the position of the Federal Respondent in Opposition herein, and the argument in support of said position. This Court's holdings in Rodrigue and Chevron do not address the application of the LHWCA to injuries on the outer continental shelf. In Rodrigue the issue was whether a wrongful death action arising out of an injury on an oil drilling platform on the outer continental shelf was governed by Louisiana State law or the Federal law as set forth in the Death on the High Seas Act. In Chrevon, a similar issue was involved which dealt with determinations under Louisiana State Statutes, as opposed to Federal Admiralty Doctrines.

Rodrigue and Chrevon were decided before the 1972 Amendments to the LHWCA, and the matters set forth therein are not on point with the present facts and issues with the case at hand.

Likewise, the Fifth Circuit cases cited by Petitioner, namely in re Dearborn Marine Service, Inc., 499 F.2d 263 (5th Cir. 1974), cert. dismissed 423 U.S. 886 (1975) and Terry V. Raymond International, Inc., 658 F.2d 398 (5th Cir. 1981), reh'g in banc denied, 667 F.2d 92 cert denied, 456 U.S. 928 (1982), are likewise not on point for the same reasons as cited immediately above, in that they concern themselves with injuries sustained on petroleum platforms, and thus involved issues as to admiralty jurisdiction, and do not apply to the LHWCA context, and thus do not represent a conflict as

Petitioner contends herein.

As briefly referred to earlier, the lower Court's decision is not in conflict with the other Circuits as Petitioner contends herein. The cases cited by Petitioner do not support this alleged conflict. The First Circuit in the case of Graziano v. General Dynamics Corporation, 663 F.2d 340 (1st Cir. 1981) addressed the status requirement for a maintenance-mason at General Dynamics whose duties involved the repair of masonary in shipyard buildings, but also included digging ditches, breaking up concrete with a jackhammer, laying cement, removing asbestos from pipes, repairing boilers in manholes and cleaning acid tanks. In its Decision, the First Circuit refers to this Court's decision in Caputo, supra, whereby longshoremen eligible for coverage was defined as "persons whose employment is such that they spend at least some of their time in undisputably longshoring operations and who, without the 1972 Amendments, would be covered for only part of their activity", 432 U.S. at 273, 97 S. Ct. at 2362. In the same opinion, reference was also made to this Court's opinion in Pfeiffer, supra, whereby the First Circuit acknowledged the language used whereby it was stated that "a worker responsible for some portion of that longshoring activity is as much an integral part of the process of loading and unloading a ship as a person who participates in the entire process", 444 U.S. at 82-83, 100 S. Ct. at 337-38. Thus, the First Circuit found the necessary status requirement and granted coverage under the Act.

Likewise, the Fourth Circuit Decision in Caldwell v. Ogden Sea Transport, Inc., 618 F.2d 1037 (4th Cir. 1980), as cited by Petitioner, does not support a conflict. In Caldwell, the Appelate Court agreed with the District Court in rejecting the Jones Act claim on the basis that as a matter of law he was not a seaman or borrowed servant of the shipowners. The Court went on to state that though the exact nature of his duties may not have been fully developed on the record, it thereby left the question of LHWCA status open for resolution. Thus, no conflict is established.

Along these lines, Petitioner has also cited the Third and Fourth Circuit opinions in the cases of Lynn v. Highland Patterson, Inc., 483 F. Supp. 1247 (W.D. Pa.), Aff'd, 636 F.2d 1209 (3rd Cir. 1980) and Conti v. Norfolk & Western Railway Co., 566 F.2d 890 (4th Cir. 1977). In Lynn, the Court found that although a crane barge was utilized in the construction operations and the Plaintiff had often boarded it, the Court found that his construction duties did not require him to load, repair, or build navigable vessels, which can be clearly distinguished from the facts of the present case at Bar, whereby Plaintiff would spend a portion of his time in "load-out" operations, as has been more fully described above.

In Conti, the Plaintiff was employed as a brakeman by Norfolk & Western Railway Co., and his job duties consisted of tying brakes uncoupling levers, giving signals, inspecting cars, and starting cars on their way to the scales and dumpers. Thus, the Court concluded that the occupation was not of a traditional maritime nature, but on the contrary were those traditionally associated with railroading.

Given the above distinctions, Respondent Thornton contends that the argument and authorities as set forth by Petitioner do not constitute a conflict of decisions with the Circuits as the same relates to status under the Act, and therefore such argument of Petitioner herein must fail. Thus, Respondent herein excepts to the statement made by Petitioner that the cases cited by Petitioner in support of Petitioner's argument regarding conflict of decision among the Circuits reveal that the Fifth Circuit's definition "maritime employment" represents a vast expansion and departure from the definition of that term currently utilized by the Circuits as set forth in the cases cited by Petitioner representing authority for Petitioner's contention.

Thus, this Court should deny the Petition for Certiorari for the reasons that have been stated above.

CONCLUSION

Congressional intent is clear, together with prior authority of this Court and the United States Courts of Appeals mandate the

Conclusion that Respondent Thornton is entitled to coverage under the provisions of Section 902(3) of the Longshoremen's and Harbor Workers' Compensation Act. The opinion of the United States Court of Appeals for the Fifth Circuit in this case is not in conflict with this Congressional intent and the prior authority of this Court, together with authorities from the other Circuit Courts and thus the Petitioner for Certiorari should not be granted and the opinion of the United States Court of Appeals for the Fifth Circuit should be affirmed.

Respectfully submitted,

LAW OFFICE OF ATREUS M. CLAY

Atreus M. Clay
5643 Turtle Creek
Houston, Texas 77017
Phone: (713) 944-1790
ATTORNEY FOR RESPONDENT BILLY THORNTON

CERTIFICATE OF SERVICE

I hereby certify that a three copies of this Response for Writ of Certiorari have been served upon each of the parties required to be served, i.e., on BEN L. REYNOLDS, 2200 Texas Commerce Tower, Houston, Texas 77002; on ROBERT M. MAHONEY, Southwest National Bank Bldg., Suite 600, 102 Versailles Ave., Lafayette, Louisiana 70502; on MR. WILLIAM P. RUTLEDGE, P. O. Box 3668, 201 West 9th Street, Lafayette, Louisiana 70501; on the Director, by addressing the same to JOSHUA T. GILLELAN, Office of the Solicitor, U. S. Department of Labor, Suite N-2620, 200 Constitution Ave., Washington, D. C. 20210; and on the Solicitor General of the United States, Department of Justice, Washington, D. C., 20530, on this 2nd day of December, 1983.

Atreus M Clay

Atreus M. Clay

ORIGINAL

MOTION FILED
DEC 5 1983

NO. 83-243

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

BROWN & ROOT, INC., ET AL., PETITIONERS

V

BILLY THORNTON AND JAMES H. BROUSSARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

TO THE HONORABLE COURT:

COMES NOW, BILLY THORNTON, Respondent as to the Petition for Writ of Certiorari in the above entitled and numbered cause and makes and files this his Motion for Leave To Proceed In Forma Pauperis and would state to the Court as follows:

I

The employer/carrier has filed Petition for Writ of Certiorari and has filed the required Brief in support of its position.

II

The Solicitor General, Department of Justice, has likewise filed a Brief for the Federal Respondent in opposition.

III

Respondent BILLY THORNTON has been requested by this Honorable Court to file an Brief setting forth his position.

V.

BILLY THORNTON states that due to his financial condition, that he cannot afford the expense of having his Brief prepared by an private printer, and thus requests that he be allowed to proceed in Forma Pauperis so that the response he makes herein may be type written on legal size paper, and made pursuant to applicable rules of procedure, and submits the Affidavit attached hereto in support of his position.

WHEREFORE, PREMISES CONSIDERED, BILLY THORNTON prays that the Motion for Leave to Proceed in Forma Pauperis as to the filing of his Brief, that his Motion herein be granted, and for such other and further relief to which he may show himself to be justly entitled.

Respectfully submitted,

LAW OFFICE OF ATREUS M. CLAY

Atreus M. Clay

Atreus M. Clay
5643 Turtle Creek
Houston, Texas 77017
Phone: (713) 944-1790
Bar No. 04330000
ATTORNEY IN CHARGE FOR RESPONDENT
BILLY THORNTON

CERTIFICATE OF SERVICE

I hereby certify that on the 22 day of December, 1983, a true and correct copy of the Motion for Leave to Proceed in Forma Pauperis, together with Affidavit in Support thereof, has been forwarded, by pre-paid postage, upon each of the parties required to be served: MR. BEN L. REYNOLDS, Royston, Rayzor, et al, 2200 Texas Commerce Tower, Houston, Texas 77002, attorneys for Petitioners, Brown & Root and Highlands Insurance Company; MR. ROBERT M. MAHONY, Southwest National Bank Bldg., Suite 600, 102 Versailles Ave., Lafayette, Louisiana 70502, attorneys for Petitioners, Waukesha-Pegrce Industries, Inc., and Highlands Insurance Company; MR. WILLIAM P. RUTHLEDGE, P. O. Box 3668, 201 West 9th Steet, Lafayette, Louisiana 70501, counsel for Respondent Broussard; JOSHUA T. GILLELAN, Office of the Solicitor, U. S. Department of Labor, Suite N-26220, 200 Constitution Ave., Washington, D. C. 20210; and on the Solicitor General of the United States, Department of Justice, Washington, D. C., 20530.

Atreus M. Clay

Atreus M. Clay

NO. 83-243

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

BROWN & ROOT, INC., ET AL., PETITIONERS

V

BILLY THORNTON AND JAMES H. BROUSSARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

I, BILLY THORNTON, being first duly sworn, depose and say that I am the Respondent in Opposition to the Petition for A Writ of Certiorari in the above entitled case; that in support of my Motion to Proceed in Forma Pauperis without being required to pay the costs of having my Brief prepared by a private printer, and thus be allowed for my response to be type written on legal size paper and photo duplicated, and thus avoid the high cost of having a private printer produce said Brief; that I believe I am entitled to redress; and that the issues which I desire to respond to is whether land-based workers, injured during the construction of off-shore drilling platforms, were "engaged in maritime employment" at the time of injury within the meaning of Section 2(3) of the

Longshoremen's & Harbor Workers' Compensation Act, 33 U.S.C. 902(3).

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of responding to this Petition for Writ of Certiorari.

1. Yes, I am presently employed by Brown & Root, Inc., 4101 Clinton Drive, Houston, Texas. I work fifty (50) hours a week to make ends meet, and my gross pay is approximately $2,900.00 per month.
2. I have not received within the past twelve (12) months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source.
3. I do not have any cash in a checking or savings account.
4. I do not own any stock, bonds, notes, or other valuable property. The only real estate I own is my homestead that I am making payments on. The only automobile I own is a 1973 Chevrolet, El Camino.
5. The persons who are dependent upon me for support are my children SONYA ANNE THORNTON, and CHRISTOPHER CARL MATEJ.

I understand that a false statement or answer to any questions in this Affidavit will subject me to penalties for perjury.

Billy Thornton

BILLY THORNTON

THE STATE OF TEXAS I

COUNTY OF HARRIS I

SUBSCRIBED AND SWORN TO before me on this 22nd day of November, 1983.

Mary A. Owens

Mary A. Owens
Notary Public in and for
Harris County, T E X A S

My commission expires October 23, 1984.